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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 550.

CHEMICAL BANK NEW YORK TRUST COMPANY and MANUFACTURERS HANOVER TRUST COMPANY, formerly MANUFACTURERS TRUST COMPANY,

Petitioners,

against

ROBERT F. KENNEDY, Attorney General of the United States,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

PETITIONERS' REPLY BRIEF.

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The thrust of respondent's argument in opposition to this petition for certiorari is that the decision of the Court of Appeals concerns a matter of "no continuing importance." Petitioners respectfully submit that the matter does have continuing importance, for the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision." *U. S. Supreme Court Rule* 19-1(b). Furthermore, the decision below conflicts with applicable decisions of this Court, and deprives petitioners of their concededly just claims.

Respondent's assertion that the matter is of no continuing importance appears to be based primarily upon the fact that the filing of any future claims against vested property are barred by §208(b) of the International Claims Settlement Act, 22 U. S. C. §1631g(b). (Respondent's Brief, p. 11). But the issues presented by the unwarranted departure of the Court of Appeals from the accepted and usual course of judicial proceedings, together with this Court's continuing interest in justice to litigants, provide important reasons for this Court's consideration of the case.

It *is* of continuing importance to the administration of justice that the power of a Court of Appeals to consider new contentions beyond the scope of review in the District Court be delineated. The decision complained of conflicts with this Court's decisions limiting the scope of such review.

The administrative practice permitted by the Court of Appeals' decision; and that Court's denial of a statutory right of review upon the basis of a contention first raised in that Court, must not be countenanced. The fundamental fairness required of administrative agencies by due process of law, and the accepted standards required of judicial proceedings, are violated when a court sanctions the conduct followed here by an agency of the government. The license given to an administrative agency to disregard its own determinations; to belatedly assert a new ground for reaching its previous decision, thereby conclusively foreclosing a party from realizing upon its admittedly just claim, if not reversed, will establish a precedent for

administrative abuses—certainly a matter of continuing importance.

The writ should issue.

Respectfully submitted,

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December 24, 1963

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